

Message Text

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ACTION ARA-17

INFO OCT-01 ADP-00 AID-20 CIAE-00 COME-00 EB-11 FRB-02

INR-10 NSAE-00 RSC-01 TRSE-00 XMB-07 OPIC-12 CIEP-02

LAB-06 SIL-01 OMB-01 DODE-00 PM-07 H-02 L-03 NSC-10

PA-03 PRS-01 SS-15 USIA-12 AGR-20 INT-08 EUR-25 RSR-01

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P R 272000 Z JUN 73

FM AMEMBASSY BUENOS AIRES

TO SECSTATE WASHDC PRIORITY 2612

INFO AMEMBASSY MONTEVIDEO

UNCLAS SECTION 1 OF 2 BUENOS AIRES 4568

E. O. 11652: N/ A

TAGS: ECON, AR

SUBJ: ARGENTINE DRAFT LAW GOVERNING FOREIGN INVESTMENT

REF: BA-666

1. SUMMARY. FULL TEXT OF DRAFT FOREIGN INVESTMENT LAW PUBLISHED IN DAILY CRONISTA COMERCIAL JUNE 23. DELIVERED TO CHAMBER OF DEPUTIES ALONG WITH NINE OTHER ECONOMIC MEASURES JUNE 21, CONTRARY TO EXPECTATIONS OF EARLIER SUBMISSION REPORTED IN REFTEL. DRAFT CLOSELY AND EXPLICITLY FOLLOWS FOREIGN INVESTMENT REGIME SET UP BY ANDEAN PACT. ESTABLISHES SYSTEM FOR COMPREHENSIVE GOA CONTROL AND DIRECTION OF ALL FOREIGN INVESTMENT IN ARGENTINA. ALL SUCH INVESTMENT TO BE GOVERNED BY CONTRACTS WITH GOA, WITH VIEW TO SHIFTING INVESTMENT TO PRIORITY FIELDS AND LEAVING RELATIVELY LITTLE ROOM FOR MANAGEMENT INITIATIVE. SOME SECTORS TO BE CLOSED TO FOREIGN INVESTMENT. STRICT LIMITS ESTABLISHED FOR REPATRIATION OF CAPITAL, REMISSION OF PROFITS, AND ACCESS TO LOCAL CREDIT BY FOREIGN INVESTORS. FOREIGN INTEREST WILL BE PRESSED TO DIVEST THEMSELVES OF CONTROLLING OR MAJORITY HOLDINGS IN MOST CASES OR FACE HEAVY TAXATION OR BLOCKAGE OF REMISSIONS.

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RIGOROUS IMPLEMENTATION OF LAW IN PRESENT FORM LIKELY TO DISCOURAGE DESIRED NEW FOREIGN INVESTMENT AND INJECT NEW STRAIN BILATERAL RELATIONS WITH USG. MAIN PROVISIONS FOLLOW. END SUMMARY.

2. ALL COMPANIES ARE CATEGORIZED AS NATIONAL, MIXED, OR FOREIGN ACCORDING TO PERCENTAGE OF NATIONAL SHARE IN CAPITAL AND DECISION-MAKING POWER. PERCENTAGES SAME AS IN ANDEAN PACT: FOREIGN FIRMS THOSE WITH 50 TO 100 PER CENT FOREIGN CAPITALIZATION; MIXED FIRMS THOSE WITH FOREIGN SHARE OF 20 THROUGH 49 PERCENT; NATIONAL FIRMS THOSE WITH FOREIGN SHARE LESS THAN 20 PERCENT. MAJOR DIFFERENCE IS THAT, IN MIXED FIRMS, ARGENTINE LAW WOULD CALL FOR EFFECTIVE DECISION-MAKING AND DIRECTION OF FIRM TO BE ENTIRELY IN HANDS OF LOCAL INVESTORS.

3. NEW DIRECT INVESTMENTS WILL REQUIRE APPROVAL OF CONTRACT BETWEEN FOREIGN INVESTORS AND "AUTHORITY OF APPLICATION". LATTER TO BE SET UP WITHIN MINISTRY OF ECONOMY. CONTRACTS FOR MIXED FIRMS MAY BE APPROVED BY PRESIDENT, THOSE FOR FOREIGN FIRMS MUST GO TO CONGRESS.

4. CONTRACT WILL SPECIFY NINE "FUNDAMENTAL REQUIREMENTS". MOST SIGNIFICANT INCLUDE: (A) INVESTMENT MUST TAKE PLACE IN PRIORITY ACTIVITIES AND GEOGRAPHIC ZONES AS DETERMINED BY THE EXECUTIVE; (B) BALANCE OF PAYMENTS IMPACT MUST BE POSITIVE, THROUGH IMPORT SUBSTITUTION OR EXPORT EXPANSION; (C) FIRM MUST EMPLOY ARGENTINE MANAGERS, TECHNICIANS, ADMINISTRATIVE PERSONNEL, ETC. IN PROPORTIONS TO BE SPECIFIED IN EACH CONTRACT; (D) NO NATIONAL FIRM MUST BE DISPLACED FROM MARKET; (E) ADEQUATE FINANCING FOR FULL DEVELOPMENT OF PROJECT MUST BE GUARANTEED. ELSEWHERE, DRAFT STATES PRIORITY WILL BE GIVEN TO PROPOSALS WHICH WILL INCREASE NATIONAL EMPLOYMENT; USE NATIONAL TECHNOLOGY, RAW MATERIALS, AND CAPITAL GOODS; CONTRIBUTE TO GEOGRAPHIC DECENTRALIZATION; COMMIT INVESTOR TO DEPOSIT NON-REMITTABLE PROFITS WITH OFFICIAL BANKS, AND/ OR MAKE SPECIFIC COMMITMENTS FOR REINVESTMENT. THESE WILL ALSO BE SPECIFIED IN CONTRACT, WHEN APPLICABLE.

5. NEW FOREIGN INVESTMENT WILL NOT BE AUTHORIZED UNDER SPECIFIED CONDITIONS. THESE INCLUDE: INVESTMENT INVOLVING LIMITATIONS OR CONDITIONS PLACED UPON SUBSEQUENT EXPORTS OF PRODUCTION; AGREEMENTS WHICH LIMIT THE JURIDICTON OF ARGENTINE COURTS OR WHICH ALLOW UNCLASSIFIED

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SUBROGATION OF FOREIGN INVESTORS' INTERESTS BY OTHER STATES OR INTERNATIONAL ENTITIES. ALSO, FOREIGN INVESTORS ARE PROHIBITED FROM ACQUIRING EXISTING INTERESTS IN OR PHYSICAL ASSETS OF COMPANIES OWNED BY NATIONAL CAPITAL.

6. NEW FOREIGN INVESTMENT WILL NOT BE ALLOWED IN THE FOLLOWING AREAS OF ECONOMIC ACTIVITY: (1) ACTIVITIES RELATED TO NATIONAL DEFENSE AND SECURITY; (2) PUBLIC SERVICES; (3) INSURANCE; (4) COMMERCIAL BANKING, EXCEPT BRANCHES OF FOREIGN BANKS WHEN A "REGIME OF RECIPROCITY" EXISTS AND IT SUITS THE NATIONAL INTEREST; (5) OTHER FINANCIAL ACTIVITIES; (6) ADVERTISING, BROADCASTING, AND PUBLISHING; (7) DOMESTIC SALES OPERATIONS, BOTH WHOLESALE AND RETAIL; (8) ACTIVITIES RESERVED BY LAW FOR STATE ENTER -

PRISES OR NATIONAL COMPANIES APART FROM SUBCONTRACTING ARRANGEMENTS WITH PRIVATE FIRMS; (9) AGRICULTURE AND CATTLE-RAISING; (10) FORESTRY AND MINING; AND (11) OTHER SECTORS, AS THE GOA MAY SPECIFY BY LAW.

7. IN AREAS WHERE NEW FOREIGN INVESTMENT IS PERMITTED, THE GOA "WILL GIVE PREFERENCE" TO PROPOSALS TO BE CARRIED OUT BY COMPANIES OF MIXED OR NATIONAL CAPITAL. HOWEVER, ANY MIXED COMPANY AUTHORIZED UNDER THIS PROVISION MUST BE TRANSFORMED INTO A NATIONAL COMPANY WITHIN TEN YEARS. CONTRACTS WILL ALSO SPECIFY EXPORT VOLUMES TO BE REALIZED BY THE FIRM. THERE IS NO REFERENCE IN THIS PARAGRAPH (ARTICLE 7) TO FIRMS OF FOREIGN CAPITAL OR THEIR OBLIGATIONS.

8. ANNUAL REPATRIATION OF CAPITAL WILL BE PERMITTED, BUT SHALL IN NO CASE EXCEED 20 PERCENT OF TOTAL REPATRIABLE CAPITAL. NO REPATRIATION SHALL TAKE PLACE FOR AT LEAST FIVE YEARS AFTER APPROVAL OF EACH CONTRACT. CONTINUATION OF THE ACTIVITIES AND SERVICES OF THE FIRM INVOLVED MUST BE GUARANTEED IN THE CONTRACT, AND SHALL TAKE PRECEDENCE OVER REPATRIATION RIGHTS. SUMS TO BE REPATRIATED MUST HAVE PRIOR GOA APPROVAL EACH YEAR, AND WILL BE CALCULATED IN THE CURRENCY ORIGINALLY AUTHORIZED, AT THE

EXCHANGE RATE IN EFFECT AT THE TIME EACH ANNUAL REPATRIATION IS AUTHORIZED. REPATRIABLE CAPITAL IS DEFINED AS THE ORIGINALLY AUTHORIZED FOREIGN CAPITAL ACTUALLY INVESTED, PLUS AUTHORIZED REINVESTMENTS, MINUS REPATRIATED CAPITAL AND NET LOSSES.

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9. PROFITS MAY BE REMITTED ABROAD ANNUALLY, AT A RATE FIXED IN THE ORIGINAL CONTRACT OR ITS MODIFICATIONS. MAXIMUM RATE, AS A PERCENTAGE OF REPATRIABLE CAPITAL, WILL BE 12.5 PER CENT OR THE BANK RATE PAID FOR 180- DAY DEPOSITS IN THE COUNTRY OF ORIGIN PLUS FOUR POINTS, WHICHEVER IS HIGHER. PROFITS MAY ALSO BE REINVESTED IN THE SAME COMPANY OR INVESTED IN OTHER FIRMS, WHEN AUTHORIZED ON CASE BY CASE BASIS. NO AUTHORIZATION WILL BE NECESSARY FOR ANNUAL REINVESTMENT IN SAME COMPANY UP TO FIVE PERCENT OF ORIGINAL INVESTMENT IN SAME COMPANY UP TO FIVE PER CENT OF ORIGINAL INVESTMENT. BOTH CASES WILL GENERATE NEW LEGAL CAPACITY TO TRANSFER EARNINGS AND CAPITAL ABROAD. ANNUAL PROFITS IN EXCESS OF THE MAXIMUM RATES FOR REMISSION, PROFITS FOR WHICH TRANSFER IS NOT REQUESTED, AND PROFITS NOT SPECIFICALLY AUTHORIZED FOR REINVESTMENT CANNOT BE REMITTED. THEY MAY, HOWEVER, BE REINVESTED OR INVESTED WITHOUT GENERATING UNCLASSIFIED

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ADDITIONAL RIGHTS TO REMIT.

10. ACCESS TO DOMESTIC CREDIT BY FOREIGN COMPANIES WILL BE RESTRICTED

TO SHORT TERM CREDIT, AND THE TOTAL LEVEL OF DOMESTIC INDEBTEDNESS WILL NOT EXCEED REPATRIABLE CAPITAL PLUS RESERVES OF NATIONALIZE DPROFITS.

11. ALL EXISTING FOREIGN INVESTMENTS REALIZED UNDER " WHATEVER NORM" PRIOR TO PROMULGATION OF THIS LAW MUST BE ENTERED IN A REGISTRY OF FOREIGN INVESTMENTS, TO BE SET UP BY SUBSEQUENT DECREE. ALSO, WITHIN 120 DAYS OF PUBLICATION OF THAT REGULATORY DECREE, ALL FOREIGN INVESTORS MUST CHOOSE WHETHER TO SUBMIT THEIR OPERATIONS TO THE NORMS OF THIS LAW OR TO CONTINUE UNDER THE REGIME WHICH GOVERNED THE INITIAL INVESTMENT.

12. EXISTING COMPANIES OF FOREIGN CAPITAL ADHERING TO THE NEW REGIME MUST SIGN A NEW CONTRACT WITH THE GOA, AS IN THE CASE OF NEW INVESTMENT, WHICH WILL REQUIRE THE TRANSFORMATION OF THE FIRM INTO A MIXED- CAPITAL COMPANY. HOWEVER, IF THE COMPANY IS OPERATING IN ONE OF THE PROHIBITED SECTORS GIVEN IN PARA SIX ABOVE, THE FIRM MUST BE TRANSFORMED INTO A NATIONAL CAPITAL FIRM. NO PERIOD IS SPECIFIED FOR TRANSFORMATION. U. S. INVESTORS MOST LIKELY TO BE AFFECTED BY THE LATTER PROVISION IN FIELDS OF

COMMERCIAL BANKING AND FINANCIAL OPERATIONS, HYDROCARBON EXPLOITATION, AGRICULTURE, LIVESTOCK RAISING, AND MINING. ALL FOREIGN INVESTORS, UNDER PRESENT DRAFT, WILL HAVE TO REDUCE HOLDINGS TO 49 PERCENT OR 19 PERCENT, AT MOST, DEPENDING ON SECTOR.

13. COMPANIES WHICH CHOOSE TO CONTINUE UNDER PREVIOUS LEGAL NORM WILL BE SUBJECTED TO SUBSTANTIAL TAXES ON REMISSION OF EARNINGS, RANGING FROM 20 TO 40 PER CENT.

14. ANY EXISTING FOREIGN INVESTMENT WHICH IS NOT REGISTERED WITHIN THE 120 DAYS PROVIDED WILL BE PROHIBITED FROM REGISTERING, AND WILL FORFEIT ANY RIGHT TO REMIT EARNINGS OR REPATRIATE CAPITAL.

15. EXTERNAL DEBT CONTRACTED BY FOREIGN FIRMS SUBSEQUENT TO THIS LAW SHALL REQUIRE PRIOR APPROVAL BY CENTRAL BANK, WHICH MAY ESTABLISH LIMITS FOR SUCH INDEBTEDNESS FOR INDUSTRIAL
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SECTORS OR FOR THE ENTIRE ECONOMY. SUCH DEBTS SHALL NOT RECEIVE GUARANTEES OR OTHER SUPPORT FROM DOMESTIC BANKING SYSTEM. CREDITS BETWEEN SUBSIDIARIES AND PARENT FIRMS ABROAD SHALL NOT CARRY INTEREST MORE THAN TWO POINTS ABOVE THAT FOR FIRST- CLASS SECURITIES IN THE FINANCIAL MARKET OF THE COUNTRY OR ORIGIN, UNLESS THE CENTRAL BANK HAS SET A LOWER LIMIT. THIS SECTION MAKES NO MENTION OF MIXED- CAPITAL FIRMS AND THEIR INDEBTEDNESS.

16. DRAFT WOULD ALSO GRANT AUTHORITY TO GOA TO TAKE ANY STEPS REQUIRED TO RECONVERT INTO NATIONAL CAPITAL FIRM ANY COMPANY WHICH ONCE WAS A NATIONAL FIRM AND WHICH HAS BEEN PURCHASED BY FOREIGN INVESTORS. IN CONTRAST TO SEPARATE MEASURE BEING APPLIED TO NATIONALIZE BANKING INTEREST BOUGHT BY FOREIGN BANKS SINCE 1966, THIS PROVISION STATES NO LIMITATIONS WITH REGARD TO ECONOMIC SECTORS OR PERIOD IN WHICH FOREIGN PURCHASE TOOK PLACE. RECONVERSION TO NATIONAL FIRM MUST TAKE PLACE WITHIN THREE YEARS.

17. AUTHORITY OF APPLICATION AND REGISTRY FO FOREIGN INVESTMENTS TO BE ESTABLISHED WITHIN 120 DAYS OF PROMULGATION OF LAW.

18. COMMENT. THIS DRAFT LAW NO BEFORE APPROPRIATE COMMITTEE IN CHAMBER OF DEPUTIES. MOST LIKELY OUTCOME, AS REPORTED IN REFETEL, STILL SEEMS TO BE RAPID CONSIDERATION AND PASSAGE INTO LAW BY BOTH CHAMBERS. THIS MEASURE CONSTITUTES AN EXTREMELY DISCOURAGING DEVELOPMENT FOR FOREIGN COMPANIES HERE, AND ALSO FOR THE FUTURE COURSE OF OUR BILATERAL ECONOMIC RELATIONS WITH ARGENTINA. IT WAS EXPECTED, OF COURSE, THAT THE ROLE OF FOEIGN CAPITAL WOULD BE SUBJECTED TO MORE STRINGENT RULES OF OPERATION UNDER A PERONIST REGIME. WHILE THE PROVISIONS OF THIS DRAFT STATUTE DO NOTFULFILL THE WORST FEARS IN CIRCULATION PRIOR TO THE CHANGE IN GOVERNMENT, THEY REMAIN EXCESSIVELY

NATIONALISTIC AND PREJUDICIAL TO ARGENTINA'S OWN INTERESTS.
AMERICAN BUSINESSMEN HERE ARE MOST UPSET BY THE REQUIREMENTS FOR
EVENTUAL DIVESTITURE OF MAJORITY INTERESTS IN VIRTUALLY ALL CASES.
ALSO DISTURBING ARE THE LIMITS ESTABLISHED FOR THE TRANSFER OF
CAPITAL AND EARNINGS, AND THE DEGREE TO WHICH MANAGEMENT DECISIONS
WILL BE BOUND BY CONTRACTUAL REQUIREMENTS AND BUREAUCRATIC
CONTROLS. SUCH LATITUDE AS IS PROVIDED FOR INTERPRETATION IN
IMPLEMENTING THE LAW SEEMS ONLY TO HOLD THE POSSIBILITY OF EVEN
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STRICTER REQUIREMENTS BEING MADE ON FOREIGN INVESTORS.

19. THE CONSENSUS OF OPINION IN FOREIGN BUSINESS AND LEGAL CIRCLES IS THAT THE DRAFT LAW CAN ONLY DISCOURAGE NEW INFLOWS OF BADLY-NEEDED CAPITAL AND TECHNOLOGY, AS WELL AS MAKING IT MORE DIFFICULT FOR THE GOA TO ACQUIRE ADDITIONAL INTERNATIONAL FINANCIAL ASSISTANCE IN THE FUTURE. PROBABLE IMPACT OF THE LAW IS OBVIOUSLY CONTRADICTORY TO PERON'S EXPRESSED DESIRE TO ATTRACT NEW CAPITAL FROM EUROPE. EMBASSY WILL OF COURSE REMAIN ALERT TO THE POSSIBILITY OF DISCRIMINATION IN THE FUTURE ADMINISTRATION OF THE LAW TO FAVOR EUROPEAN INVESTMENTS.

20. THE DRAFT AS PUBLISHED IN THE PRESS CONTAINS SOME SIGNIFICANT CHANGES FROM A DRAFT CIRCULATED SOME DAYS PREVIOUSLY. MOST CHANGES TENDED TO SOFTEN SOME OF THE MORE DRASIC PROVISIONS. IN THE OPINION OF SOME LEGAL SOURCES HERE, THERE MAY BE FURTHER AMENDMENTS BEFORE FINANCIAL PASSAGE BUT THE BASIC PRINCIPLES AND ATTITUDE OF RESTRICTION RATHER THAN INCENTIVE WILL REMAIN. APART FROM UNFAVORABLE EFFECT ON ARGENTINE INTERESTS, WE EXPECT INTERESTS OF U. S. INVESTORS TO BE AFFECTED DIRECTLY AND ADVERSELY IN EVERY FIELD OF ECONOMIC ACTIVITY. WE EXPECT EXPRESSIONS OF CONCERN FROM U. S. FIRMS TO INCREASE RAPIDLY AS LAW MOVES THROUGH LEGISLATURE. THE PERONIST GOVERNMENT MAY HOPE THIS LAW WILL GIVE IT AN ADDITIONAL CLAIM TO LEADERSHIP AMONG THE SPANISH-SPEAKING COUNTRIES OF THE REGION, AS AGAINST BRAZIL AND ITS ALLEGED SUBSERVIENCE TO U. S. CAPITAL. IN ITS PRESENT FORM, THE EFFORT CAN ONLY DAMAGE THE ARGENTINE ECONOMY IN ITS DEVELOPMENT EFFORTS.

21. TEXT AND TRANSLATION FOLLOW BY AIR POUCH.
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